IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO. 1746 OF 2004

The Divisional Railway Manager,
Western Railway,
Mumbai Central,
Mumbai 400 008. ... Petitioner

Vs.

1. Damodardas Govindbhai Wani,
2. Moorkoth Sreedharan,
3. Madhukar Vasant Anjarlekar,
4. R.M. Shetty,
C/o. Room No. 5, Abdulla Building,
Parel Post Galli,
Dr. Ambedkar Road, Parel,
Mumbai 400 012.

5. The Presiding Officer,
CGIT No. 2, 2nd Floor, Shram Raksha
Bhavan, Shivsrushti Road, Opp.
Priyadarshini, Eastern Experss
Highway, Sion, Mumbai 400 022.

Mr. Suresh Kumar for Petitioner.

Ms. Hutoxi Tavadia for Respondents.

CORAM : F.I. REBELLO,J.
DATED : OCTOBER 08, 2004

ORAL JUDGMENT

1. Rule. Heard forthwith.

2. The Petitioner is impugning the order dated 14.5.2003 in Application L.R. No.2/80 of 1999. That was an application by 7 applicants of whom three applicants namely Rajkumar, Mukund and V.K. Naik have withdrawn their claims. By the impugned order, the learned Labour Court was pleased to allow the application of four remaining applicants

who are now Respondent Nos. 1 to 4 before this court. The case of the Applicants IS that they were working as Assistant Station Master in Western Railway. It was their contention that apart from the hours of duty until relieved they put in two additional hours of work which they were entitled to claim as Over time.

. This claim was opposed by the Petitioners herein on the ground firstly that the Applicants were not workman within the meaning of Section 2(s) of the Industrial Disputes Act. Their further objection is that the Applicants are not entitled to any relief as there was no settlement agreement or other condition of services under which they were entitled to two hours of over time. In the written statement, it was pointed out that the Applicants were continuous workers and in terms of the regulations they were duty bound to put in 108 hours of work in 14 days.

3. The learned Labour Court proceeded on the footing that under Rule 5 of Section 4 of the Hours of employment regulation and if the award of the Railway Tribunal is considered, it would be apparent that for the purpose of handing over and taking over charge, in relation to the cash, the applicants were entitled to the credit of two hours per day. Reference was then made to the

Application No. 2/169 of 1990, 2/194, 195, 494 of 1988 wherein in similar circumstances it has been held that the applicants therein were entitled to overtime for two hours per day which orders has not been interfered with. Reliance next was placed in the judgement of a learned Single Judge of this Court in Writ Petition No. 1005 of 1986 decided on 1.2.1988 wherein the learned Judge held that the workman therein were entitled to credit of two hours for the purpose of handing over and taking over the cash amount. After so holding, the learned Labour Court held that on the facts of the case as claim pertains to two hours overtime for counting cash and handing over the same to the reliever, therefore, the facts being similar, applicants Station Superintendent/Assistant Station Master are entitled to overtime of two hours per day for the period mentioned in the annexures and accordingly passed the impugned order.

4. At the hearing of this petition, on behalf of the Petitioner, it is submitted that the judgement in J.P. Pareira Vs. The Divisional Railway Manager in Writ Petition No. 1005 of 1985 will not preclude this court from considering afresh the contentions as now urged herein. A contention is also raised that the Labour court in exercise of its jurisdiction under Section 33C(2) could not have gone into the issue as to whether the

Respondent Nos. 1 to 4 were workmen under Section 2(s) of the Industrial Disputes Act.

. On the other hand, on behalf of the Respondent No. 1 to 4 their learned counsel contends that the Petitioners in similar cases have accepted the award and have paid to the workers. Apart from that many other workmen who had not approached the court have been granted the benefit of over time. The learned counsel for that purpose has filed an affidavit dated 1.9.2004 setting out instances. It is therefore, submitted that the Railways having accepted the said custom, should not now be permitted to go back on the same. Once the benefit has been given to section of the employees, the petitioners are bound to get it as they are similarly situated. Apart from that it is pointed out that the Judgement in the case of J.P. Pareiara (supra) still continues to hold the field and in these circumstances, this court ought not to interfere with the impugned award.

5. With the above, we may now consider the controversy taking into consideration the contentions advanced by the parties. Before doing so, it will be necessary to point out that in the application filed by the Respondent Nos. 1 to 4, their claim to O.T. was not based on the Miabhoy award or for that matter on any O.M. or G.R.

issued by the Petitioner or any rule or regulation. The contention on behalf of the Respondent Nos. 1 to 4 was that they were working in shifts and at the end of shift they had to count cash and only after counting of cash was complete and it was handed over to the Relieving Assistant Station Master were they relieved. This normally takes two hours. It is based on this practice that the Respondent Nos. 1 to 4 claimed that they are entitled to two hours of over time.

. Considering the order of the Labour Court, we may firstly consider the Miabhoy award and its recommendations as accepted by the Railways. Justice Miabhoy Commission came to be appointed pursuant to certain demands as raised by the National Federation of Indian Railwaymen with regard to which an agreement could not be arrived at between the Railway Board and N.F.I.R. The report was submitted on 6.7.1972. In the instant case, we are only concerned with the hours of work and over time covered by Terms of Reference No. 5 under Hours of Employment Regulations. In the matter of hours of employment, certain recommendations were made in the matter of working hours of employment of continuous and essential workers. The Respondents before the Labour Court are continuous workers. The Board accepted that working hours of Railway employees, covered by the

Hours of employment regulation consists of 48 hours a week in the case of continuous and essential intermittent workers. Under Clause 2(b) were set out hours of work of workers who are required to do preparatory and or complimentary work. In the case of continuous worker, it is 48 hours plus time for preparatory and or complimentary works subject to maximum of six hours a week. Under Clause 3.1(b) the hours of work of continuous workers was 54 hours a week. It was also provided that the workers who do not fall in any of the four groups of workers of Para (2) (1) (a) will irrespective of their classification be excluded from the purview of the principle of averaging. In the case of such staff if any work is taken from them beyond the daily rest hours on any day, overtime for such work will be calculated on daily basis. Thereafter in Clause 4(a) for the purpose of these orders, adverted to statutory limits of working hours was to be same as in the existing rules which for continuous workers is 54 hours a week.

6. The Railway Board thereafter issued a circular dated 13.6.74 under the heading hours of employment Regulations- Report of Railway; Labour Tribunal, 1969-Hours of Employment of Continuous, Intensive and Essentially Intermittent Workers. In Paragraph 2 it was set out that the Government had accepted these recommendations of the Tribunal. and the

Railway Board had decided amongst others that in so far as preparatory work and complimentary work hours of employment of continuous workers to be 48 hours a week. Another order came to be issued on 18/20.6.1974. In Para 4.1 statutory limits of working hours for continuous workers were 54 hours a week. In Para 6.226 in (6)(c) in the matter of payment of O.T. it was provided as under :

> "Continuous and Intensive workers will earn over time, if they put in more than 96 and 84 hours respectively in two weeks plus, in those cases they are required to do preparatory and/or complementary work, such additional number of hours as they are required to work on that account during that period."

. Therefore, in so far as continuous workers are concerned, they had to work 48 hours plus six hours for preparatory and complimentary works. In other words 54 hours and in two weeks 108 hours. It is only thereafter, if they work for more than 108 hours, were they entitled to O.T. for the additional hours of work put in by them. It is further provided in (g) as under :

> "Rate of overtime shall be 1.1/2 times the ordinary rate for overtime work

beyond rostered hours but within statutory limits, but, it shall be twice the ordinary rate for overtime worked beyond statutory limits."

. From a reading of the above, what becomes clear is that the hours of work for the continuous workers includes preparatory and or complimentary work upto 6 hours i.e. maximum 54 hours a week.

. With that we may now come to the Judgement of the learned Single Judge of this Court in J.P. Pereira (supra). In that case, the Petitioners were Assistant Station Masters. It was their contention that they have regular rostered duty hours of work in which 30 minutes is handing over and taking over which includes the receiving of cash. It was their contention that instead of 30 minutes, they were required to work for two hours to count the cash and hand it over and thus they had to work for two hours more in addition to the normal duty hours. Their application was resisted on behalf of the Railways on the ground that allowance was based on duty hours and duty list and that 30 minutes were permitted for preparatory and complimentary work of handing over and taking over of cash during the regular 8 hours duty and that the Assistant Station Master was entitled to

Overtime if they performed duty beyond rostered hours. The Petitioners therein had not submitted any claim for two hours extra duty and the same has not been paid. The Labour Court in that case came to the conclusion that as per the hours of employment, the petitioners were entitled to O.T. of one hour per day i.e. six hours a week. The Applicants therein including Pereira were aggrieved by that order granting them only one hour per day i.e. six hours a week. That was the subject matter of the challenge. The learned Single Judge proceeded on the footing that it was admitted position that the Petitioners are continuous workers. The argument advanced on behalf of the Petitioners therein was that the relevant time they were not covered by the hours of employment Regulation but were covered by the report submitted by the Railway Labour Tribunal, 1969 presided over by Justice N.M. Miabhoy, retired Chief Justice of Gujarat High Court. In terms of the award given by justice Miabhoy, the Petitioners were entitled to two hours O.T. every day. It was argued that this position was accepted by the same Labour Judge while deciding Application No.LCB-449 of 1982 decided on 7.1.1985. The same Labour Judge therein had observed that hours of Employment Regulations have subsequently undergone a change in pursuance of the award of the Miabhoy Tribunal, which had directed that continuous and Intensive workers will

earn overtime, if they put in more than 96 and 84 hours respectively in two weeks in those cases where they are required to do preparatory and/or complementary work, such additional number of hours as they are required to work on that account during that period. The learned Judge of the Court accepted the reasoning given in LCB 443/82 and allowed the Petition.

8. We have earlier considered the provisions of the Miabhoy Tribunal and Railway Board's decision. Miabhoy Tribunal had given its report on 6.7.72. The report contained recommendations which then had to be accepted by the Railway Board. The Railway; Board and the Government of India considered the recommendations and accepted them in the form as earlier pointed out in so far as working hours are concerned. It will therefore, be clear that, that would constitute the working hours of the Western Railway employees would not be report of the Miabhoy Committee but the recommendations as accepted by the Railway Board. We have gone through the notifications. The notifications provide that in case of workers doing continuous work and who are required to do preparatory and or complementary work, then hours of work is to be 48 hours plus maximum 6 hours per week i.e. 54 hours a week. The Learned Judge proceeded based on an erroneous interpretation given by the Labour Court

in another order which was not the subject matter of the challenge before the learned Judge. It is no doubt true that the judgment is of another coordinate Bench of this court. However, what would be binding would be the the ratio of the judgement. The ratio of the judgement would include (1) facts in issue (2) Issue of law to be decided and if need to be decided (3) and if the issues are decided by giving reasons. In the instant case, the judgement proceeded based on the award of the Labour Court which had not correctly considered the recommendations of the Miabhoy Committee as accepted by the Railway Board. In view of that, it cannot be said that the order of J.P. Pareira being a judgement of a Coordinate Bench of this court, the matter needs to be referred to a larger Bench.

. Reliance placed in the judgement in Union of India & Ors. Vs. P.J. Panchal & Ors. in Writ Petition No. 578 of 1998 decided on 29.4.1998 is misplaced. The issue involved in that petition was whether the application under Section 33(c)(2) was barred and as the matter pertains to interpretation of service regulations whether the provisions of the Administrative Tribunal Act would be attracted.

The present issue was not in issue.

8. Having so considered, now the question is

whether it was open to the Labour Court to exercise jurisdiction on the facts of the case. Miabhoy Committee had given its recommendations based upon the demands by the National Federation of Railway Employees. The recommendations to the extent they were accepted were notified by the Railway Board. The category of staff like present petitioners have been moving under Section 33(c)(2). In these circumstances, objection as now raised is belated. Even otherwise, on behalf of the Petitioners, their learned counsel makes a statement that considering the earlier judgements of this court, they will not challenge the maintainability of the applications moved by the present Respondent No. 4 under Section 33(c)(2) on the ground that they were not workman and that the Labour Court had no jurisdiction. Even otherwise, in my opinion, considering the facts and circumstances and earlier orders, it will not be open to the petitioners to raise such objection.

9. On the perusal of the order of the Labour Court, it is not possible to find the basis on which the order directing payment of Over time was passed. At least there is no such material or evidence to support the finding of the Labour Court. However, considering the facts and circumstances, in my opinion it will be appropriate that Respondent Nos. 1 to 4 be given an

opportunity of making good their case. In the light of that, the following order :

10. The impugned order of the Labour Court dated 14.5.2003 to the extent it allowed the claims of Respondent Nos. 1 to 4 is set aside. The matter is remanded back to the Labour Court to consider the matter afresh on merits in view of the observations in this judgement and after giving an opportunity to the parties to lead additional evidence, if they so desire and then to pass orders according to law. Rule made absolute accordingly.
No order as to costs.

. If the Respondent Nos. 1 to 4 make any application for production of records, the petitioners to make available the records which may be available with them.

. The Labour Court is directed to dispose of the matters as expeditiously as possible.

. P.A. to issue authenticated copy of this order.

(F.I. REBELLO,J.)